

STATE OF NORTH CAROLINA
FORSYTH COUNTY

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
10 EDC 2793

Student, by parent or guardian, *Parent*,)
Petitioners,)
)
v.)
)
WINSTON-SALEM/FORSYTH)
COUNTY BOARD OF EDUCATION,)
Respondent.)

ORDER OF DISMISSAL

THIS MATTER comes before the undersigned Administrative Law Judge on Respondent's Motion to Dismiss, made orally on September 13, 2010. This contested case was noticed for hearing by the undersigned for Monday, September 13, 2010, at 10:00 a.m. at the Forsyth County Courthouse in Winston-Salem, North Carolina. Petitioners failed to appear for hearing after proper notice.

Involuntary dismissal is proper pursuant to Rule 41(b) of the North Carolina Rules of Civil Procedure in instances when petitioners fail to prosecute or to comply with the NC Rules of Civil Procedure or any order of court. Based on Petitioners' failure to appear for the hearing in this contested case, despite receiving proper notice, disposition of this case by dismissal in accord with Rule 41(b) of the North Carolina Rules of Civil Procedure is proper and lawful. It is hereby **ORDERED** that this matter be **DISMISSED with prejudice**.

NOTICE

The North Carolina Department of Public Instruction has notified the Office of Administrative Hearings that a Final Decision based on an Order of dismissal is not subject to appeal to the NC Department of Public Instruction.

Pursuant to the provisions of NORTH CAROLINA GENERAL STATUTES Chapter 150B, Article 4, any party wishing to appeal the final decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The party seeking review must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Decision and Order. N.C. GEN. STAT. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Pursuant to N.C. GEN. STAT. §150-B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial review must be sent to the Office of Administrative Hearings at the time of the appeal.

In the alternative, any person aggrieved by the findings of decision of this Final Decision, Order of Dismissal may institute a civil action in the appropriate district court of the United States as provided in Title 20 of the United States Code, Chapter 33, Subchapter II, Section 1415 (20USC 1415). Procedures and time frames regarding appeal into the appropriate United States district court are in accordance with the aforementioned Code cite and other applicable federal statutes and regulations. A copy of the filing with the federal district court should be sent to the Exceptional Children Division, North Carolina Department of Public Instruction, Raleigh, North Carolina so that the records of this case can be forwarded to the court.

IT IS SO ORDERED.

This the 17th day of September, 2010.

Julian Mann III
Chief Administrative Law Judge